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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-164

PASADENA CITY BOARD OF EDUCATION, ET AL.,
Petitioners,

vs.

NANCY ANNE SPANGLER, ET AL.,
Respondents,

and

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR PETITIONERS.

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BRIEF FOR PETITIONERS.

OPINIONS BELOW.

The opinions for the Court of Appeals for the Ninth Circuit are reported at 519 F. 2d 430. The opinion of the District Court for the Central District of California is reported at 375 F. Supp. 1304. An earlier opinion of the District Court is reported at 311 F. Supp. 501.

JURISDICTION.

The judgment of the Court of Appeals for the Ninth Circuit was entered on 5 May 1975. Certiorari was granted by this Court on 11 November 1975. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. May a trial court validly impose an absolute requirement of racial balance for all schools within a school system as part of a desegregation decree?

2. May a trial court validly require a unitary school district continuously to maintain, within each school in its system, a specified and permanent racial balance, despite the occurrence over time of demographic changes beyond the board's control?

3. Must a unitary school system which has been in compliance with a desegregation decree for a period of four school years remain subject indefinitely to the control of the trial court which entered the decree?

4. Is a unitary school system precluded from adopting an educational program in the nature of an alternative plan because that plan would not maintain a prescribed racial balance in each school throughout the system, and would permit some freedom of choice in student matriculation?

CONSTITUTIONAL AND STATUTORY PROVISIONS.

The relevant constitutional and statutory provisions, the First and Fourteenth Amendments to the Constitution of the United States, Title 20 United States Code §§ 1701 *et seq.*, and Title 42 United States Code §§ 2000(c), 2000(c)(6), 2000(h)(2), and 2000(h)(3), are set out in the appendix to this brief.

STATEMENT.

On 23 January 1970, the United States District Court for the Central District of California entered a judgment in this case which enjoined the Pasadena City Board of Education "from discriminating on the basis of race in the operation of the Pasadena Unified School District." 311 F. Supp. at 505 [App. 3].* The defendants, petitioners here, were further "enjoined from failing to prepare and adopt a plan to correct racial imbalance at all levels in the Pasadena Unified School District." *Ibid.* The judgment continued: "The plan shall provide for student assignments in such a manner that, by or before the beginning of the school year that commences in September of 1970 there shall be no school in the District, elementary or junior high or senior high school, with a majority of any minority students." 311 F. Supp. at 505 [App. 3-4].

The trial court operated on the invalid assumption that racial imbalance and segregation were one and the same. "Racial segregation and racial imbalance are two names for the same phenomenon, racial separation. The terms are used interchangeably throughout these findings and conclusions." 311 F. Supp. at 506 n. 4 [App. 99].

The failure of the Pasadena School Board to correct this racial imbalance was the primary basis on which the system was found to be a dual system and, therefore, constitutionally defective. Thus, the trial court found:

> 1. The evidence in this case establishes that there is racial imbalance or segregation in the student bodies and faculties of the Pasadena Unified School District at all levels, elementary schools, junior high schools, and senior high schools.
>
> 2. That imbalance is a result of defendants failure to carry out their announced policies of integration, policies that relate both to faculty and student assignments.

* * * * *

* Citations to "App." are references to the Joint Appendix filed herewith.

> 5. Pasadena City Board of Education has used a neighborhood school policy and a policy against forced cross-town busing to explain its failure to carry out its policies of integrating students and teachers and staff members. The neighborhood school policy is an educational consideration, but it does not normally have constitutional proportions. Under facts of which the Pasadena City Board of Education has been aware since at least 1958 as they affect the District's elementary schools, it can be recognized that the use of neighborhood school policy results in racial imbalance and increasing racial imbalance. The same is true of the policy against cross-town busing.

311 F. Supp. 504 [App. 97-98].

In response to the trial court's judgment, the Pasadena School Board submitted a plan that accorded with the mandate of the trial court [App. 6-94]. And an order approving defendants' plan for integration was approved by the court on 10 March 1970 [App. 96].

Unlike most desegregation plans, the Pasadena Plan called for immediate and total desegregation. It was not a plan that used a step-by-step process. It extirpated all remnants of school segregation immediately. The plan was effectuated in September of 1970. At that point, Pasadena clearly was operated as a unitary school system. There was "no school in the District, elementary or junior high or senior high school, with a majority of any minority students."

The Pasadena Plan, enacted in March of 1970, was effectuated in September of 1970, and has remained in effect to this date. No exception was taken to the operation of the Plan by either the plaintiffs, the United States, or the trial court, until the petitioners filed their motions which are the subject of controversy on this appellate review. This is not to say that there was no community opposition to the rigid racial quotas and extensive cross-town busing that were required to effectuate them. The opposition was extensive and loud, and these issues were the primary subject of contention in the school board elec-

tions, at which the "anti-busing" candidates prevailed. It is to say, however, that the Pasadena Plan was fully effectuated by the school board, that it was fully supported with the increased financing that it made necessary, and that the record shows no actions by the school board in derogation of the Plan's effectiveness. Unlike other communities, such as Boston and Louisville, there has been no violence or threats of violence either by the pro- or antibusing forces in the community. However dedicated to a modification of the existent Plan the board representing the majority of the community might be, its dedication to change was a dedication to change through the machinery of law and not through the use of force. That is why the case is here.

The school board was concerned about the viability of the Pasadena school system under the existent plan because of two conditions. One was the diminishing proportion of the white student population [App. 298, 393]. The second was the diminishing quality of educational attainment, especially among minority students [App. 389, 522].

At the time of the framing of the Pasadena Plan, the school population of the district had 17,859 whites, 9,173 blacks, and 3,590 other minorities (primarily Hispanic-Americans). Thus, of the 30,622 students, 58.3% were white, 30% were black, and 11.7% were of other minorities. When the motions presented by the school board were filed in 1974, the Pasadena school population consisted of 11,188 whites, 10,155 blacks, and 4,071 other minorities, or 44% white, 40% black, and 16% other minorities [App. 415]. There was a 37.4% decrease in the white student population, a 10.7% increase in the black population, and a 31.2% increase in the population of other minorities. In the interim, a majority white student body had become a majority non-white student body. This is not, of course, a phenomenon unique to Pasadena, but its logical extension—*cf. Calhoun* v. *Cook*, 522 F. 2d 717, 718 (5th Cir. 1975)—was an understandable matter of concern to the school board.

So, too, there was ample evidence that under the Pasadena Plan as effected, there was a great disparity between the achievement scores of the whites and those of the minorities, although both were declining. See, *e.g.*, [App. 282].

On 15 January 1974 the petitioners filed a four part motion with the district court requesting: (1) to be relieved of the racial balance ruling; (2) for dissolution of the court's injunction; (3) for termination of the court's continued supervision over the board of education; and, in the alternative, (4) for modification of the existing plan by addition of the proposed Alternative Plan. That Alternative Plan is set out at 375 F. Supp. 1309-1312 [App. 460-465]. A hearing was held from 25 February to 1 March, 1974, and the trial court denied petitioners' motions in their entirety on 1 March. The court filed its opinion on 3 May 1974, and entered judgment as of the previous day. 375 F. Supp. 1304 [App. 452].

On the date that the 1974 trial began, all parties filed a stipulation which included two propositions relevant to this review. It was stipulated that:

> 2. The Pasadena Plan enacted pursuant to the Order of this Court date January 22, 1970 has been implemented;
>
> 3. Plaintiffs and Plaintiff-Intervenor are presently aware, on the basis of the discovery thus far concluded, of no violations of the Pasadena Plan up to and including the present, save that it is the contention of Plaintiffs that the appointment of the two Assistant Superintendents and the Director of Elementary Curriculum on July 10, 1973, the appointment of the Principals of the Wilson and Fundamental Schools on July 31, 1973, the failure of the Board to have the Black Task Force and the Mexican American Task Force for the school year 1973-74, the establishment of the Fundamental School, and the effect of the Fundamental School on the sending schools are each violations of said Plan.

[App. 268].

There is no question that all parties were aware of the fact that, at the time of the stipulation, demographic changes had

caused some schools to fall outside the restriction of "no majority of any minority" for any school in the district. The facts were, as Judge Wallace stated them in his dissenting opinion below:

> The injunction took effect in the fall of 1970. In October, 1970, no school had a majority Black enrollment. In October, 1971, one out of 35 regular schools in the district had a majority Black enrollment (51.95). In October, 1972, four schools were in violation with Black enrollments of 53.9%, 53.4%, 53.0% and 50.1%. Finally, in October, 1973, five schools failed to comply, with Black enrollments of 60.2%, 56.8%, 55.3%, 52.0%, and 51.3%. Thus, over the four-year period that the injunction has been in effect, only one school has had a Black enrollment in excess of 60% and only two have had an enrollment exceeding 55%, all in the most recent school year. During that time, the percentage Black enrollment in the district as a whole has increased from 32.8% (in October, 1970) to 40.0% (in October, 1973).

519 F. 2d at 443.

The obvious conclusion to be drawn from these facts in combination with the stipulation is that the parties did not understand the original judgment to have ordained continued reapportionment of the students each year in order to maintain within each school the racial balance of "no majority of any minority." (The fact is, of course, that white students are not any longer in a majority in the school system.) But that turned out not to be the trial judge's conception of his own order. For him, annual reassignment was a continuing requirement and would remain so. "Now, that meant to me that at least during my lifetime there would be no majority of any minority in any school in Pasadena." [App. 270.]

The trial judge's opinion read accordingly. He denied each of the petitioners' motions. He denied the first three elements because: (1) there had been deviation from the racial balance command, and (2) because the school board was elected on an antibusing platform and in opposition to the principles of the

Pasadena Plan, and had failed publicly to embrace the plan as the "given word." 375 F. Supp. at 1305-06. The court did not, and could not, point to any acts of the school board that were in violation of his decree or of the Pasadena Plan, except for not reassigning students each year to recreate the racial balance that he had decreed. So far as the decreased white student population, he found no significance in the facts: "for the trends evidenced in Pasadena closely approximate the state-wide trends in California schools, both segregated and desegregated, since 1966." *Id.* at 1306.

The trial judge rejected the alternative plan basically because it would not adhere to the racial balance formula that he had decreed. "Initially, at least eight schools . . . would have over 60% black enrollment." 375 F. Supp. at 1307 n. 9. (It must be remembered that this was a school district with 35 regular schools and a ~~black~~ student population that was 44% white and 40% black.) Moreover, the proposed plan had a "freedom-of-choice" element which could be a cause for some departure from the fixed racial balance that the court had decreed.

> The facts of *Green, supra,* may not exactly parallel what this Court found in Pasadena in 1970 or what evidently exists in Pasadena in 1974; but the message of *Green, supra,* is clear. Before any Court can stamp its imprimatur to a proposed "freedom of choice" plan of desegregation —or of continuing desegregation—it must be satisfied that freedom of choice is a viable alternative to a plan which can guarantee that no school in a once-segregated school district shall be permitted to have an enrollment with a majority of any minority.

375 F. Supp. at 1307 [App. 456].

Thus, the essential bases for rejecting all four parts of petitioners' motions was the court's insistence upon maintaining its decreed racial mix in every school in the system, and the court's distaste for a busing policy inconsistent with its own personal preferences.

The Court of Appeals for the Ninth Circuit affirmed the trial court's judgment, but without any agreement on the reasons why it should do so. 519 F. 2d 430. Judge Ely affirmed the judgment of the trial court because of the failure to adhere to the racial mix order. Judge Chambers would have found that order invalid if an appeal had been taken from the original judgment, but was prepared to tolerate the requirement of continued racial mix for one more round, but no longer. Judge Wallace would reverse because the trial court's judgment was inconsistent with the decisions of this Court. There was one difference between the Court of Appeals and the trial court that may be of some significance. The trial judge's personal distaste for the board's attitudes was not reflected in the appellate tribunal. As Judge Ely noted: "In upholding the District Court, we have assumed that the actions of the Board and its authorities were, from their viewpoint, taken in good faith." 519 F. 2d at 435 n. 5.

This Court granted a petition for a writ of certiorari to review the judgment below on 11 November 1975.

SUMMARY OF ARGUMENT.

I.

In 1970, the trial court imposed a desegregation plan on the Pasadena school district that compelled a rigid racial balance in every school in the district. That was an invalid plan. But the school district complied with the order and effectuated the plan.

In 1974, in the judgment subject to review here, the district court issued an order compelling the annual reassignment of students to maintain the racial balance it had originally ordained for every school in the district, "at least during my lifetime." That action is invalid under the opinions of this Court.

This Court has never condoned the desegregation of a school system by the imposition of fixed and permanent racial balance quotas. Such a plan and an order compelling the annual re-

assignment to maintain racial balance in each school are inconsistent with this Court's judgments.

II.

Because the Pasadena school district has been a unitary school system since the imposition of the 1970 plan, the time has come for it to be freed from the bondage imposed by the trial court. The arguments that the school district is not a unitary system are invalid and inconsistent with this Court's decisions. The demographic changes that have occurred without the board being responsible therefor, and the resulting failure of all schools to conform to the racial balance formula, do not show the absence of a unitary system. Nor do the school board's anti-busing platform and statements constitute segregatory acts.

III.

The demographic changes do suggest the need for a program better and different from one that simply requires reassignment of students to meet the racial balance standard. The program suggested by the school board, which calls for "magnet schools" with voluntary attendance, is designed to enhance the substantive educational program and decrease the chances of desegregation that might otherwise occur because of the constantly decreasing white population in the school system. Even if the trial court is allowed to retain continuing jurisdiction over the school board, it cannot preclude the institution of the Alternative Plan, which it has rejected because the Alternative Plan would not adhere to the racial mix formula and involves some elements of "freedom of choice."

IV.

This case is moot and the judgments below should be vacated and the case dismissed. All individual plaintiffs have been graduated and no class has been certified. The United States, as

intervenor-plaintiff under statutory authority, has achieved the full extent of relief available on behalf of the individual plaintiffs. It is legally precluded from seeking the relief sought here—a plan for permanent racial balance to be accomplished by forced busing.

ARGUMENT.

In *Keyes* v. *School District No. 1*, 413 U. S. 189, 253 (1973), Mr Justice Powell noted: "The single most disruptive element in education today is the widespread use of compulsory transportation, especially at elementary grade levels." It was not merely transportation to which he was pointing, but "compulsory transportation," or, in the vernacular, "forced busing." The truth of his proposition would be hard to gainsay. Nevertheless, it is appropriate to recognize that "compulsory transportation" or "forced busing" is only a means, albeit sometimes the only means utilized, for the effectuation of school desegregation plans that are framed, as is the one in this case, primarily in terms of "proper racial balance," otherwise described as "racial mix" or "racial quotas." The forced busing flows from the command for racial balance.

Once a court determines, as did the trial court here, that desegregation is to be defined in terms of racial balance, *i.e.*, that all schools in the district shall reflect in their student population, the same racial ratios that exist in the entire school population, then forced busing follows as a primary means for the effectuation of that goal. The more rigid the racial mix formula, the more extensive the compulsory transportation required to effect it.

This case presents a particularly rigid judicial order for racial balance, and, therefore, a particularly onerous busing obligation.

(1) The trial court, with the approval of the Court of Appeals for the Ninth Circuit, has insisted that every school in the district conform to the racial mix standard, "no majority of any minority," with no exceptions. In a school district that had, at

the time the plan was instituted, a student population of 58.3% white, 30% black, and 11.7% other minorities, and at the time of the action which is under review, a student population of 44% white, 40% black, and 16% other minorities, this is, indeed, a rigid, if not impossible, racial balance formula. The trial court, with the approval of the Court of Appeals for the Ninth Circuit, has insisted on the maintenance of this formula by annual reassignment of pupils, despite the demographic changes within the district which, in addition to movement within the district, has resulted in a 37.4% decrease in the white student population, a 10.7% increase in the black student population, and a 31.4% increase in the student population of other minorities [App. 415].

(2) When first instituted, the desegregation plan called for forced busing of 50% of its elementary school pupils, 52% of its junior high school pupils, and 27% of its high school pupils, [App. 46], thus putting the greatest burden where it was least able to be borne. The population shifts that have occurred since the initiation of the plan would necessarily require even a higher rate of forced busing.

I. The Judgment Below, Which Compels a Rigid Racial Balance in Every School in the Pasadena School District, Is Invalid.

A. The Original Judgment Below Compelling "Racial Balance" in Every School in the System Is Invalid.

The trial court in this case, when it first rendered its judgment in 1970, had the excuse that this Court had not yet rendered its opinions in *Swann* v. *Board of Education*, 402 U. S. 1 (1971), or *Milliken* v. *Bradley*, 418 U. S. 717 (1974). Its proposition that "racial balance" and "desegregation" were interchangeable terms, and its conclusion, that every school within the Pasadena system was required to meet its "racial balance" standard, were then not rendered in defiance of this Court's opinions,

but in ignorance of them. By the time of the 1974 judgment, which is the subject of review here, however, the trial court's judgment clearly required a rejection of this Court's positions and should, therefore, be reversed.

Since 1970, this Court has made it abundantly clear that racial balance is not a proper formula for a desegregation decree.

The invalidity of a decree compelling racial balance was made clear by a unanimous Court in *Swann* v. *Board of Education*, 402 U. S. at 24, in this language:

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse.

The Court's position in this regard was reaffirmed in *Milliken* v. *Bradley*, 418 U. S. at 740-41. And yet, the judgment below commands, exactly what this Court said that it could not command, a "particular degree of racial balancing or mixing" for every school in the district. This Court is "obliged to reverse."

B. The Judgment Below Compelling Annual Reassignment of Students In Order To Maintain "Racial Balance" in Every School in the System Is Invalid.

It is not possible, of course, to turn back the clock here any more than it was in *Brown* v. *Board of Education*, 347 U. S. 483 (1954). The Pasadena School District has been, since 1970, a totally "racially balanced" school district. Obviously, petitioners do not seek to overturn the original decree, however invalid it might be. But in the decision under review here, the lower courts have piled Pelion on Ossa. On top of the original racial balance program, the trial court now insists that the Pasadena School district has to be reassigned each year to maintain the existence of its racial balance formula in every school in the system. As the judge read his original decree, "that meant to me that at least during my lifetime there would be no majority of any minority in any school in Pasa-

dena," [App. 270]. The Court of Appeals for the Ninth Circuit did not read the command quite so expansively. The majority of that court were prepared to say that some time in the immediate future, the rigidity of the racial balance formula could be relaxed, but that time, according to them had not quite yet come.

Once again, in calling for annual reassignment, the courts below were acting inconsistently with this Court's determination in *Swann*, 402 U. S. at 31-32:

> Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.

There is obviously no showing here that the petitioners have in any way contributed to, no less caused, the demographic changes that have resulted in some minor variations from the racial mix formula imposed on all schools in the district. And, as we assert in the following section of this brief, the Pasadena School district is and has been a unitary system since 1970 and entitled to be discharged from the judicial custody. Certainly the school district should not be compelled to suffer an extension of an erroneous racial balance order that was invalid *ab initio*.

II. The Pasadena School District Is and Has Been a Unitary System Since 1970 and Should Be Relieved of Judicial Control.

Unlike many, if not most, desegregation plans, the Pasadena plan, effected integration in one fell swoop. Since the institution of that plan, the Pasadena system is and has been one "within

which no person is . . . effectively excluded from any school because of race or color." *Alexander* v. *Holmes County Board of Education*, 396 U. S. 19, 20 (1969); *Northcross* v. *Board of Education of Memphis*, 397 U. S. 232, 237 (1970) (Burger, C. J.).

It is true, as the Court of Appeals below stated, 519 F. 2d at 431 n. 1:

> We note that one of the basic legal issues presented by this appeal, the question of when and under what circumstances a school district may compel a federal district court to relinquish jurisdiction and end its supervision, has not yet been addressed by any Court of Appeals or by the United States Supreme Court.

It is equally true, however, that this Court has set forth the conditions precedent to relieving a school of judicial supervision. This Court said, in *Raney* v. *Board of Education*, 391 U. S. 443, 449 (1968):

> In light of the complexities inhering in the disestablishment of state-established segregated school systems, *Brown II* contemplated that the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved. We agree with the observation of another panel of judges of the Court of Appeals for the Eighth Circuit in another case that the district courts "should retain jurisdiction in school segregation cases to insure (1) that a constitutionally acceptable plan is adopted, and (2) that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system is rapidly and finally achieved." *Kelley* v. *Altheimer*, 378 F. 2d 483, 489. See also *Kemp* v. *Beasley*, 389 F. 2d 178.

There can be no doubt, indeed there is no argument, that the Pasadena Plan is a constitutionally acceptable plan in the eyes of the District court and the Court of Appeals. (Its defect, the racial mix requirement, does not detract from the finding that the plan imposed a unitary system on the Pasadena school district.) There is no valid argument that the plan has not been

"operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system [has been] rapidly and finally achieved."

The argument of the courts below that the unitary system has not been achieved rests on one or two clearly invalid contentions: (1) that the demographic changes which caused some schools to fall outside the racial balance formula prevents the school system from being treated as unitary; (2) the expressions of the school board against forced busing and its proposals for modification of the Pasadena plan somehow deprive the school system of its unitary status.

A. The Demographic Changes That Caused Some Schools in the System To Fail To Maintain the Prescribed Racial Balance Do Not Adversely Affect the School System's Unitary Status.

This Court said in *Swann*, 402 U. S. at 31:

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decisions in *Brown I*. The systems would then be "unitary" in the sense required by our decisions in *Green* and *Alexander*.
>
> It does not follow that the communities served by these systems will remain demographically stable, for in a growing mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action has been eliminated from the system. . . .

Nevertheless, the courts below have relied on the fact that demographic changes have resulted in the failure of some schools to meet the racial balance requirement as demonstration that the Pasadena system has not been fully desegregated. A comparison with two other recent cases, in conflict with the decision below, emphasizes the failure of the lower courts in this case to adhere to the Court's pronouncements. It is not inappropriate,

first, to point out that the disparities, in light of the school population, hardly even constitute violations of the racial balance standard imposed by the lower courts. After the demographic changes, not attributable to the school board—indeed, referred to by the lower courts as typical of the changes occurring in all school districts in California—there were five schools that did not maintain the required white majority: one of them had a 60.2% black majority, the other four had black majorities of 56.8%, 55.3%, 52.9%, and 51.3% respectively. This, in a school population that was 40% black and 44% white. 519 F. 2d at 443.

The two Court of Appeals decisions referred to above were *Mapp* v. *Board of Education*, ... F. 2d ..... (6th Cir., 20 October 1975), and *Calhoun* v. *Cook*, 522 F. 2d 717 (5th Cir. 1975). In the *Mapp* case, the desegregation plan called for the following high school student distribution:

	Black	White
Brainerd High School	32%	68%
Chattanooga High School	44%	56%
Howard High School	75%	25%
Riverside High School	75%	25%

As a result of demographic changes, the actual attendance figures were as follows:

	Black	White
Brainerd High School	39%	61%
Chattanooga High School	43%	57%
Howard High School	99%	1%
Riverside High School	99%	1%

The Sixth Circuit held that there was no violation of its desegregation decree because of the disparities caused by population movement after the formulation of the plan.

In the Atlanta case, *Calhoun* v. *Cook*, the Court of Appeals for the Fifth Circuit, unanimously held that a school system was unitary despite demographic changes of far wider scope than those involved in this case. As the Fifth Circuit there pointed

out, a segregated school system—segregated by law—which in 1958 contained 115,000 pupils was changed into a substantially segregated school system of 80,000 pupils. A system with a 70% white majority turned into a system with an 85% black majority. 522 F. 2d at 718.

"Out of 148 schools in the city system Atlanta still operates 92 schools with student bodies which are over 90% black." 522 F. 2d at 719. The Fifth Circuit sustained a ruling that the system "was unitary and had purged itself of all vestiges of the formerly state imposed dual system," although this "unitary . . . school district . . . has never utilized noncontiguous pairing, has never bussed white children into predominant black schools and in which over 60% of its schools are all—or substantially all —black." *Ibid.*

Yet, the courts below hold that Pasadena has not achieved unitary status, despite extensive busing, despite the fact that there are no all black or substantially all black schools, because five schools have black majorities ranging from 50% to 60% as a result of demographic changes for which petitioners have had no responsibility. Certainly, the population shifts that have caused the minor variants in attendance ratios in Pasadena cannot be considered either to have been violations of the original decree or as destroying the unitary nature of the system created in 1970.

B. The Petitioners' Outspoken Opposition to Forced Busing Cannot Be Considered a Violation of the Unitary System.

Mr. Justice Holmes once wrote: "It is not enough for the knight of romance that you agree that his lady is a very nice girl—if you do not admit that she is the best that God ever made or will make you must fight." Holmes, *Collected Legal Papers* 310 (1920). That, too, is the attitude of the district court judge below. It is not enough that the school board has carried out the Pasadena Plan in its every detail, and there is no evidence of any failure to comply. Judge Real wants the board

also to abstain from speaking out against forced busing and holds that its failure to do so amounts to continuing segregation.

We do not press here the question whether such speech as the members of the school board have indulged can, within the confines of the First Amendment, be made into a violation of the school desegregation decree. We think it suffices that nothing that the members of the School Board have said is different in substance from the announced policy of the enacted laws of the United States or from the views of Mr. Justice Powell, expressed in his concurring opinion in *Keyes* v. *School District No. 1*, 413 U. S. 189, 244 *et seq.*

For example, the provisions of 20 U. S. C. §§ 1701 *et seq.*, include the following:

> **§ 1701. Congressional Declaration of Policy.**
>
> (a) The Congress declares it to be the policy of the United States that—
>
> . . .
>
> (2) the neighborhood is the appropriate basis for determining public school assignments.
>
> **§ 1704. Balance Not Required.**
>
> The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.
>
> **§ 1707. Population Changes Without Effect, Per Se, on School Population Changes.**
>
> When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in the population occur which result in school population changes in any school within such a desegregated school system, such population changes so occurring shall

> not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

See also §§ 1705, 1714, 1717, and 1718. The entire statute is set out in the appendix to this brief.

It hardly seems possible that the voicing by the members of the Pasadena School board of the very policies declared to be law by the Congress of the United States can be taken to be a violation of the unitary system that has been in effect in Pasadena since 1970.

It would seem clear that the unitary system secured by the institution of the original Pasadena Plan under the orders of the court below has remained inviolate during the period since that time. Neither the changed racial balance in a few of the schools nor the expressed views of the school board, to which the trial judge took such exception, can be treated as an infringement of the unitary nature of the system. The judicial control of the Pasadena educational system should, therefore, be ended, as was contemplated by this Court in the *Swann* and *Alexander* cases cited above.

III. If the Trial Court Is Allowed To Retain Jurisdiction, It Should Be Compelled To Allow the Amendment to the Plan Proposed by the School Board.

The school board proposed, in the event that the motions to be relieved of the trial court's yoke were denied, that its amendments to the Pasadena Plan be allowed to be put in effect. The plan essentially consisted of creating specialized schools with differing programs which, it was hoped, would be found attractive enough to both black and white parents to entice attendance by a racially mixed group of students. The concept was that a good educational program would bring out voluntary attendance, even if voluntary—as distinguished from forced—busing were required to accomplish the feat. The proposed amended

plan is set out in the district court's opinion. 375 F. Supp. 1309-12. [App. 460-465]. The petitioners asked for its utilization for a three-year period to test its effectiveness, both in reducing white flight and improving the quality of education in the school district. See *id.* at 1308 n. 17. The trial court denied this opportunity, for two reasons, neither of which is adequate to support its conclusion.

The first reason was the familiar one, that the proposed amended plan would not maintain the racial balance quotas that the trial court had established through the original plan. Once again, it should be pointed out that this is not a defect that warrants rejection of the proposed plan. In addition to the authorities already cited, reference may be made to both the majority and minority opinions in *Wright* v. *Council of City of Emporia,* 407 U. S. 451 (1972), where the entire Court was in agreement that the absence of racial balance was not a bar to the validity of an amended desegregation plan. Mr. Justice Stewart, speaking for the majority, said:

> We need not and do not hold that this disparity in the racial composition of the two systems would be sufficient reason, standing alone, to enjoin the creation of the separate school district. The fact that a school board's desegregation plan leaves some disparity in racial balance among various schools in the system does not alone make the plan unacceptable. We observed in *Swann, supra,* that "[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." 402 U. S., at 24.

407 U. S. at 464.

The four-man minority, speaking through the Chief Justice, put the same proposition in this language:

> Obsession with such minor statistical differences reflects the gravely mistaken view that a plan providing more consistent racial ratios is somehow more unitary than one which tolerates a lack of racial balance. Since the goal

> is to dismantle dual school systems rather than to reproduce in each classroom a microcosmic reflection of the racial proportions of a given geographical area, there is no basis for saying that a plan providing for a uniform racial balance is more effective or constitutionally preferred.

407 U. S. at 474.

The second reason offered by the trial court is no better than the first. The trial court ruled that the proposed plan involved freedom of choice and was, therefore, not to be tolerated. Reliance was placed, mistakenly, on *Green* v. *County School Board of Kent County*, 391 U. S. 430 (1968). First, it should be recalled that *Green* was concerned with a "freedom-of-choice" plan that was contemplated as the exclusive means for transmuting a dual system into a unitary school system. Here, the unitary school system already exists, the problem is to inhibit resegregation. Moreover, the plan is not merely a "freedom-of-choice" plan. First, it is not an open choice for all schools, but only for a specified group of schools within the system. Second, it is not merely "freedom of choice" among existing schools but freedom of choice among a variety of different kinds of school programs.

Green did not outlaw such "freedom-of-choice" elements. That case clearly announced:

> We do not hold that "freedom of choice" can have no place in such a plan. We do not hold that a "freedom-of-choice" plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself.

391 U. S. at 439-40. Nor is the "freedom-of-choice" element in the alternative plan offered here "an end in itself."

Other circuits have properly held that plans including specialized schools, as this one does, with an opportunity for parental choice among them, are appropriate even where the plan is directed to the translation of a dual system into a unitary one.

See, *e.g.*, *Hart* v. *Community School Board of Education, New York School District No. 21*, 542 F. 2d 37, 54-55 (2d Cir. 1975), citing *Stout* v. *Jefferson County Board of Education*, 483 F. 2d 84, 85 (5th Cir. 1973), and Educational Amendments of 1974, Pub. L. 93-380, Title II, § 214(f) (August 21, 1974). (The statute, 20 U. S. C. § 1713(f), is set out in the appendix to this brief, at A7.)

Since neither of the reasons tendered by the trial court were valid bases for rejecting an educational decision by the Pasadena School Board, the Board should be permitted to make its effort towards its mutual goals of preventing resegregation in Pasadena and improving the quality of the education afforded to all of its students.

IV. If This Case Is Moot, as Petitioners Suggest, the Judgments Below Should Be Vacated and the Case Dismissed.

Mootness is a jurisdictional issue. *Steffel* v. *Thompson*, 415 U. S. 452, 458 (1973); *S. E. C.* v. *Medical Committee for Human Rights*, 404 U. S. 403, 407 (1972); *Golden* v. *Zwickler*, 394 U. S. 103, 110 (1969).

> The rule in federal cases is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed. See, *e.g.*, *Roe* v. *Wade*, 410 U. S. at 125; *SEC* v. *Medical Committee for Human Rights*, 404 U. S. 403 (1972); *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

Steffel v. *Thompson*, 415 U. S. at 459 n. 10. The proper judgment for this Court, if the case is moot, is to vacate the judgments below and order the dismissal of the case. *S. E. C.* v. *Medical Committee on Human Rights*, 404 U. S. at 407; *Indianapolis School Comm'rs* v. *Jacobs*, 420 U. S. 128, 130 (1975); *Weinstein* v. *Bradford*, No. 74-1287, 44 U. S. L. W. 3372 (10 December 1975).

A. The Cause Is Moot as to the Individual Plaintiffs.

There can be no doubt, under this Court's decisions, that the case is moot insofar as the individual plaintiffs-respondents are concerned. All of the original plaintiffs have been graduated. See Petitioner's Memorandum Suggesting Mootness, Appendix. The case has not been qualified as a class action. *Ibid.* This Court's rulings in *De Funis* v. *Odegaard*, 416 U. S. 312 (1974), and *Indianapolis School Commissioners* v. *Jacobs, supra.* make it clear that this calls for dismissal for mootness.

Indianapolis School Commissioners v. *Jacobs*, 420 U. S. at 129-30, is particularly instructive:

> At oral argument, we were informed by counsel for petitioners that all of the named plaintiffs in the action had graduated from the Indianapolis school system; in these circumstances, it seems clear that a case or controversy no longer exists between the named plaintiffs and the petitioners with respect to the validity of the rules at issue. The case is therefore moot unless it was duly certified as a class action pursuant to Fed. Rule Civ. Proc. 23, a controversy still exists between petitioners and the present members of the class, and the issue in controversy is such that it is capable of repetition yet evading review. *Sosna* v. *Iowa*, 419 U.S. 393 (1975). Because in our view there was inadequate compliance with the requirements of Rule 23(c), we have concluded that the case has become moot.

The only formal entry made by the District Court below purporting to certify this case as a class action is contained in that court's "Entry on Motion for Permanent Injunction," wherein the court "conclude[d] and ordered" that "the remaining named plaintiffs are qualified as proper representatives of the class whose interest they seek to protect." 349 F. Supp., at 611. No other effort was made to identify the class or to certify the class action as contemplated by Rule 23(c)(1); nor does the quoted language comply with the requirement of Rule 23(c)(3) that "[t]he judgment in an action maintained as a class action under subdivision . . . (b)(2) . . . shall include and describe those whom the court finds to be members of the class." The need

> for definition of the class purported to be represented by the named plaintiffs is especially important in cases like this one where the litigation is likely to become moot as to the initially named plaintiffs prior to the exhaustion of appellate review. Because the class was never properly certified nor the class properly identified by the District Court, the judgment of the Court of Appeals is vacated and the case is remanded to that court with instructions to order the District Court to vacate its judgment and to dismiss the complaint.

Indeed, this case is *a fortiori*. For the original plaintiffs received all the relief, and perhaps more, than they were entitled to receive. In so doing they eliminated the grievance by which their class might be described. The Pasadena School District has become a unitary school system. And there is no possibility that the original deficiencies of which plaintiffs complained could again be imposed on them. See *Weinstein* v. *Bradford, supra.*

B. The Cause Is Moot as to the United States.

The United States does not contest the fact that the case is moot as to the plaintiffs. See Memorandum for the United States in Opposition, p. 9, n. 4. It asserts, instead, that because it is a party to the action under Title IX of the Civil Rights Act of 1964, 42 U. S. C. § 2000h-2, it is "entitled to the same relief as if it had instituted the action," and the case is not moot. Even by this standard, however, the presence of the United States is insufficient to preclude the dismissal of the action as moot.

First, if one looks to the role actually played by the United States in this case, it becomes quite clear that its function was purely ancillary to that of the plaintiffs and that it asserted no right to relief except in terms of the plaintiffs' demands. It follows that when the plaintiffs' rights have been secured and are no longer in issue, the United States has no interest to protect. The United States is not an adequate substitute for a real class whose interests are directly affected.

The same result follows if, as the United States suggests, it is entitled to relief as "if it had instituted the action." For, if we look to the governing law on which the Government would rely, we see two things. First, that there is no authorization in Title IX for the United States to file such a suit except on behalf of wronged individuals who could not secure adequate counsel in some other fashion. That is, its warrant would be to secure the interests of the plaintiffs, and those interests are no longer in issue here. Second, had it filed such a suit under the statute on which it relies, the Government would be precluded from seeking the kind of relief invoked here, *i.e.*, a plan for racial balance to be accomplished by forced busing.

Not only does 42 U. S. C. § 2000c-6 specifically preclude seeking an order "to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve racial balance," but the statute, 42 U. S. C. § 2000c(b), sets forth a definition of desegregation "that is controlling for purposes of this statute." The statute, on which the Government would predicate its authority to proceed here, states:

> (b) "Desegregation" means the assignment of students of public schools without regard to their race, color, religion, sex, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance."

Congress may not have the power to restrict the remedies of a court of equity in constitutional cases. In any event, 42 U. S. C. § 2000c-6, has been read not to impose such restraints. *Swann* v. *Board of Education*, 402 U. S. 1, 16-17 (1971). But surely it is within the power of the Congress to enact laws which prescribe the role that the Attorney General is authorized to play in suits which it authorizes the Attorney General to bring. And here Congress has spoken against the Attorney General securing relief in a school segregation case which would provide forced busing to effect racial balance.

It is, perhaps, appropriate to point out that this was not an action by the plaintiffs under 20 U. S. C. § 1706, so that the intervention by the United States could not be justified under 20 U. S. C. § 1709.

The cause, therefore, is moot as to the United States as well.

CONCLUSION.

The judgment of the lower courts should be reversed. This Court should, at least, order that the Pasadena School District cannot be placed under a continuing mandate to maintain racial balance in the schools of the district where such racial imbalance as may have occurred is not caused by petitioners. More appropriately it should order the trial court to relinquish control over the Pasadena School Board now that a unitary system has long since been achieved. If this Court does neither of these things, it certainly should compel the trial court to allow the modification of the Pasadena Plan, so that the schools in that district may be relieved of the threat of white flight and be given the opportunity to turn their attention to securing quality education as well as desegregation.

Should the Court determine that the cause is moot, however, it should simply order the vacation of the judgments below and the dismissal of the action.

Respectfully submitted,

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APPENDIX OF RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS.

THE CONSTITUTION OF THE UNITED STATES:

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV.

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

20 U. S. C.

SUBCHAPTER I—EQUAL EDUCATIONAL OPPORTUNITIES.

§ 1701. Congressional Declaration of Policy.

(a) The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled equal educational opportunity without regard to race, color, sex, or national origin; and

(2) the neighborhood is the appropriate basis for determining public school assignments.

(b) In order to carry out this policy, it is the purpose of this subchapter to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

§ 1702. Congressional Findings; Necessity for Congress to Specify Appropriate Remedies for Elimination of Dual School Systems Without Affecting Judicial Enforcement of Fifth and Fourteenth Amendments.

(a) The Congress finds that—

(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

(2) for the purpose of abolishing dual school systems and eliminating the vestiges thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

(3) the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amount of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

(4) transportation of students which creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity, is excessive;

(5) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

(6) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, "incomplete and imperfect," and have not established, a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems, except that the provisions of this chapter are not intended to modify or diminish the authority of the courts of the United States to enforce fully the fifth and fourteenth amendments to the Constitution of the United States.

§ 1703. Denial of Equal Educational Opportunity Prohibited.

No State shall deny equal education opportunity to an individual on account of his or her race, color, sex, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part 4 of this chapter, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her

place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

§ 1704. Balance Not Required.

The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal opportunity, or equal protection of the laws.

§ 1705. Assignment on Neighborhood Basis Not a Denial of Equal Educational Opportunity.

Subject to the other provisions of this subchapter, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level

and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of race, color, sex, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

§ 1706. Civil Actions by Individuals Denied Equal Educational Opportunities or by Attorney General.

An individual denied an equal educational opportunity, as defined by this subchapter may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this chapter referred to as the "Attorney General"), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

§ 1707. Population Changes Without Effect, Per Se, on School Population Changes.

When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

§ 1708. Jurisdiction of District Courts.

The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 1706 of this title.

§ 1709. Intervention by Attorney General.

Whenever a civil action is instituted under section 1706 of this title by an individual, the Attorney General may intervene in such action upon timely application.

§ 1710. Civil Actions by Attorney General; Notice of Violations; Certification Respecting Undertaking Appropriate Remedial Action.

The Attorney General shall not institute a civil action under section 1706 of this title before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part 2 of this subchapter; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.

§ 1712. Formulating Remedies; Applicability.

In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

§ 1713. Priority of Remedies.

In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or of the first combination thereof which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures without requiring transportation beyond that described in section 1714 of this title;

(e) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 1714 and 1715 of this title.

§ 1714. Transportation of Students—Limitation to School Closest or Next Closest to Place of Students' Residence.

(a) No court, department, or agency of the United States shall, pursuant to section 1713 of this title, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

Health Risks; Impingement on Educational Process.

(b) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

School Population Changes Resulting from Population Changes.

(c) When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan. which would require transportation of students to compensate wholly or in part for such shifts in school population so occurring.

§ 1715. District Lines.

In the formulation of remedies under section 1712 or 1713 of this title the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, sex, or national origin.

§ 1716. Voluntary Adoption of Remedies.

Nothing in this subchapter prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this subchapter nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this subchapter, if such plan is voluntarily proposed by the appropriate educational agency.

§ 1717. Reopening Proceedings.

A parent or guardian of a child, or parents or guardians of children similarly situated, transported to a public school in accordance with a court order, or an educational agency subject to a court order or a desegregation plan under title VI of the Civil Rights Act of 1964 in effect on August 21, 1974, and intended to end segregation of students on the basis of race, color, or national origin, may seek to reopen or intervene in the further implementation of such court order, currently in effect, if the time or distance of travel is so great as to risk the health of the student or significantly impinge on his or her educational process.

§ 1718. Limitation on Court Orders; Termination of Orders Conditioned Upon Compliance with Fifth and Fourteenth Amendments; Statement of Basis for Termination Orders; Stay of Termination Orders.

Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws may, to the extent of such transportation, be terminated if the court finds the defendant educational agency has satisfied the requirements of the fifth or fourteenth amendments to the Constitution, whichever is appli-

cable, and will continue to be in compliance with the requirements thereof. The court of initial jurisdiction shall state in its order the basis for any decision to terminate an order pursuant to this section, and the termination of any order pursuant to this section shall be stayed pending a final appeal or, in the event no appeal is taken, until the time for any such appeal has expired. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found not to have satisfied the requirements of the fifth or fourteenth amendments to the Constitution, whichever is applicable.

§ 1720. Definitions.

For the purposes of this subchapter—

(a) The term "educational agency" means a local educational agency or a "State educational agency" as defined by section 881(k) of this title.

(b) The term "local educational agency" means a local educational agency as defined by section 881(f) of this title.

(c) The term "segregation" means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin.

(d) The term "desegregation" means desegregation as defined by section 2000c(b) of Title 42.

(e) An educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

§ 1721. Separability of Provisions.

If any provision of this subchapter or of any amendment made by this subchapter, or the application of any such provision to any person or circumstance, is held invalid, the remainder of the

provisions of this subchapter and of the amendments made by this subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SUBCHAPTER II—ASSIGNMENT AND TRANSPORTATION OF STUDENTS.

§ 1751. Prohibition Against Assignment or Transportation of Students to Overcome Racial Imbalance.

No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

§ 1752. Appeals from Federal District Court Transfer or Transportation Orders Affecting School Attendance Areas and Achieving Balancing of Students; Postponement of Federal Court Orders Pending Exercise of Appellate Remedy; Expiration of Section.

Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on June 30, 1978.

§ 1753. Uniform Rules of Evidence Requirement.

The rules of evidence required to prove that State or local authorities are practicing racial discrimination in assigning stu-

dents to public schools shall be uniform throughout the United States.

§ 1754. Provisions Respecting Transportation of Pupils to Achieve Racial Balance and Judicial Power to Insure Compliance with Constitutional Standards Applicable to the Entire United States.

The proviso of section 2000c-6(a) of Title 42 providing in substance that no court or official of the United States shall be empowered to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another by one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards shall apply to all public school pupils and to every public school system, public school and public school board, as defined by title IV, under all circumstances and conditions and at all times in every State, district, territory, Commonwealth, or possession of the United States, regardless of whether the residence of such public school pupils or the principal offices of such public school system, public school or public school board is situated in the northern, eastern, western, or southern part of the United States.

§ 1755. Additional Priority of Remedies After Finding of De Jure Segregation.

Notwithstanding any other provision of law, after June 30, 1974 no court of the United States shall order the implementation of any plan to remedy a finding of de jure segregation which involves the transportation of students, unless the court first finds that all alternative remedies are inadequate.

§ 1756. Remedies with Respect to School District Lines.

In the formulation of remedies under this chapter the lines drawn by a State subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn, or maintained or crossed for the purpose, and had the effect of segregating children among public schools on the basis of race, color, sex, or national origin, or where it is established that, as a result of discriminatory actions within the school districts, the lines have had the effect of segregating children among public schools on the basis of race, color, sex, or national origin.

§ 1757. Prohibition of Forced Busing During School Year—Congressional Findings.

(a) The Congress finds that—

(1) the forced transportation of elementary and secondary school students in implementation of the constitutional requirement for the desegregation of such schools is controversial and difficult under the best planning and administration; and

(2) the forced transportation of elementary and secondary school students after the commencement of an academic school year is educationally unsound and administratively inefficient.

Student Transportation Orders Incidental to Student Transfers Pursuant to School Desegregation Plans Effective Beginning with Academic School Year.

(b) Notwithstanding any other provision of law, no order of a court, department, or agency of the United States, requiring the transportation of any student incident to the transfer of that student from one elementary or secondary school to another such school in a local educational agency pursuant to a plan requiring such transportation for the racial desegregation of any school

in that agency, shall be effective until the beginning of an academic school year.

"Academic School Year" Defined.

(c) For the purpose of this section, the term "academic school year" means, pursuant to regulations promulgated by the Commissioner, the customary beginning of classes for the school year at an elementary or secondary school of a local educational agency for a school year that occurs not more often than once in any twelve-month period.

Orders Subject to Provisions of Section.

(d) The provisions of this section apply to any order which was not implemented at the beginning of the 1974-1975 academic year.

§ 1758. Reasonable Time for Developing Voluntary School Desegregation Plans Following Detailed Notice of Violations.

Notwithstanding any other law or provision of law, no court or officer of the United States shall enter, as a remedy for a denial of equal educational opportunity or a denial of equal protection of the laws, any order for enforcement of a plan of desegregation or modification of a court-approved plan, until such time as the local educational agency to be affected by such order has been provided notice of the details of the violation and given a reasonable opportunity to develop a voluntary remedial plan. Such time shall permit the local educational agency sufficient opportunity for community participation in the development of a remedial plan.

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SUBCHAPTER IV—PUBLIC EDUCATION.

§ 2000c. Definitions.

As used in this subchapter—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

§ 2000c-6. Civil Actions by the Attorney General—Complaint; Certification; Notice to School Board or College Authority; Institution of Civil Action; Relief Requested; Jurisdiction; Transportation of Pupils to Achieve Racial Balance; Judicial Power to Insure Compliance with Constitutional Standards; Impleading Additional Parties as Defendants.

(a) Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one

school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

Persons Unable to Initiate and Maintain Legal Proceedings.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

"Parent" and "Complaint" Defined.

(c) The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, Title 18.

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS.

§ 2000h-2. Intervention by Attorney General; Denial of Equal Protection on Account of Race, Color, Religion, Sex or National Origin.

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if

the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief, as if it had instituted the action.

§ 2000h-3. Construction of Provisions Not to Affect Authority of Attorney General, etc., to Institute or Intervene in Actions or Proceedings.

Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.